

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BERNSTEIN, et al.,

Plaintiffs,

-v-

CENGAGE LEARNING, INC.,

Defendant.

CIVIL ACTION NO.: 19 Civ. 7541 (ALC) (SLC)

**ORDER**

**SARAH L. CAVE**, United States Magistrate Judge.

Pursuant to the telephonic conference held today, November 4, 2022 (the “Conference”), the Court orders as follows:

1. For the reasons stated on the record during the Conference, Cengage’s motion to compel further deposition testimony of non-party witness Juli Saitz (“Ms. Saitz”) (ECF No. 162 (the “Motion”)) is DENIED WITHOUT PREJUDICE. While, pursuant to Federal Rule of Civil Procedure 26(b)(4)(D), Cengage would have been entitled to ask Ms. Saitz about information she acquired or opinions she formed before Plaintiffs engaged her as a non-testifying expert, see Nelco Corp. v. Slater Elec. Inc., 80 F.R.D. 411, 416 (E.D.N.Y. 1978); Atari Corp. v. Sega of Am., 161 F.R.D. 417, 421 (N.D. Cal. 1994) (“Therefore, as the parties substantially agree, an expert may be deposed concerning information acquired or opinions formed prior to his employment by a party.”), Cengage had an opportunity to ask such questions during her deposition and has failed to demonstrate why, in the face of Plaintiffs’ counsel’s objections, it did not formulate questions designed to solicit the information to which Cengage was

entitled. Furthermore, Cengage has not persuaded the Court that, even if Ms. Saitz had additional information acquired or opinions formed before Plaintiffs engaged her as a non-testifying expert, how such information and opinions are pertinent to class certification. To the extent Cengage were to determine that such information and opinions were pertinent to the merits of Plaintiffs' claims, they may renew their Motion at the appropriate time. Accordingly, the Motion is DENIED WITHOUT PREJUDICE.

2. The parties shall order a transcript of the Conference and file it on the docket. The parties shall complete the annexed transcript request form and submit one request to: [etranscripts@nysd.uscourts.gov](mailto:etranscripts@nysd.uscourts.gov), by **Monday, November 7, 2022**.

Dated: New York, New York  
November 4, 2022

SO ORDERED.

  
SARAH L. CAVE  
United States Magistrate Judge

## Request for the production of a transcript from an electronic recording

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**[etranscripts@nysd.uscourts.gov](mailto:etranscripts@nysd.uscourts.gov)**

Transcripts from an electronic record are generated by a Court Approved Transcriber, NOT the Southern District Court Reporters. The transcript will be delivered to your office and you will be invoiced directly by the transcriber. Submission of this form constitutes an agreement to pay for the transcription services described herein. This form should not be submitted for the purpose of obtaining a price estimate.

**NOTE:** CJA requests require prior approval by submitting an Auth-24 document in the CJA eVoucher System. If granted, the attorney then submits the etranscripts order form (indicate CJA Request). Upon notification from the transcriber, the attorney will create a CJA 24 Voucher in the eVoucher system.

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